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BEFORE THE ARIZONA CORPORATION COMMISSION

JEFF HATCH-MILLER
Chairman
WILLIAM A. MUNDELL
Commissioner
MARC SPITZER
Commissioner
MIKE GLEASON
Commissioner
KRISTIN K. MAYES
Commissioner

2005 DEC -5 P 4: 58

AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF
DISSEMINATION OF INDIVIDUAL
CUSTOMER PROPRIETARY
NETWORK INFORMATION BY
TELECOMMUNICATIONS CARRIERS

DOCKET NO. RT-00000J-02-0066

CITIZENS' REQUEST FOR
REHEARING OF THE CPNI OPINION
AND ORDER (DECISION No. 68292)

INTRODUCTION

On November 14, 2005, the Arizona Corporation Commission ("Commission") released its Opinion and Order (Decision No. 68292) regarding Customer Proprietary Network Information ("CPNI") in the above-referenced docket. The Citizens Arizona incumbent local exchange carriers ("Citizens")¹ hereby submit this Request for Rehearing of the CPNI Opinion and Order to the Commission per A.R.S. § 40-253 and A.A.C. R14-3-11.

REQUEST FOR REHEARING

Citizens previously filed comments on the NPRM regarding the Commission's proposed CPNI rules on December 22, 2004 and exceptions to the proposed Order on November 3, 2005 and hereby incorporates those comments and exceptions by reference. Most of the issues raised by Citizens in its prior comments were not adopted

¹ Citizens' ILECs include Citizens Utilities Rural Company, Inc. (d/b/a Frontier Citizens Utilities Rural), Citizens Telecommunications Company of the White Mountains, Inc. (d/b/a Frontier Communications of the White Mountains) and Navajo Communications Company, Inc.

1 in the Opinion and Order. The CPNI Rules adopted in the Opinion and Order are still
2 constitutionally suspect in that the rules undermine protected commercial speech.
3 Specifically, as a result of the mandatory opt-out verifications included in the CPNI
4 Rules, the opt-out requirements are effectively a constitutionally impermissible opt-in
5 requirement. In the context of CPNI restrictions, at least two courts have determined that
6 it is unconstitutional to require an affirmative customer opt-in to receive truthful, non-
7 misleading commercial speech. *U.S. WEST v. FCC*, 182 F.3d 1224 (10th Cir. 1999), *cert*
8 *denied*, 530 U.S. 1213 (2000); *Verizon v. Showalter*, 282 F. Sup. 2d 1187 (W.D. Wash.
9 2003). In contrast to the Commission's methods, the FCC's opt-out methodology is
10 much more reasonable. On rehearing, the Commission should modify its CPNI Rules to
11 eliminate the verification requirements in R14-2-2108 and to rely instead on the FCC's
12 opt-out methodology.

13 In addition, the CPNI Rules impose several significant constraints on the
14 ability of telecommunications carriers to effectively serve and communicate with their
15 customers. Both the opt-in and opt-out notification information contained in the CPNI
16 Rules substantially exceeds comparable requirements specified in the FCC's CPNI rules.
17 Because the Commission requirements are substantially different than the FCC's rules,
18 the CPNI Rules will significantly burden carriers doing business on an interstate basis.
19 The FCC had previously noted that it does "not take lightly the potential impact that
20 varying state regulations could have on carriers ability to operate on a multi-state or
21 nationwide basis." July 2002 CPNI Order, at ¶ 71. As part of this rehearing, the
22 Commission should eliminate the onerous notifications requirements contained in R14-
23 2-2104 and R14-2-2105.

24 R14-2-2103(D) requires a carrier that intends to disclose CPNI to an affiliate,
25 joint venture partner or independent contractor to execute a "proprietary" agreement to
26 maintain the confidentiality of the customer's CPNI. The CPNI Rules also require

1 carriers to file the agreements with the Secretary of State and provide a copy to the
2 Commission. The FCC rules require a "confidentiality" agreement only when a carrier
3 intends to disclose CPNI to a joint venture partner or independent contractor that is
4 marketing communications-related services pursuant to opt-out approval. See 47 C.F.R.
5 § 64.2007(b)(2). Unlike R14-2-2103(D), the FCC does not require a confidentiality
6 agreement between a carrier and an affiliate when the affiliate is marketing
7 communications-related services. In addition, the FCC's CPNI rules do not require
8 confidentiality agreements when a carrier discloses CPNI to an affiliate that does not
9 provide communications-related services. On rehearing, the Commission should either
10 eliminate or modify the requirements for proprietary agreements in the CPNI Rules.


11 CONCLUSION

12 The Commission's CPNI Rules included in the Opinion and Order impose several
13 significant constraints on the ability of telecommunications carriers to effectively serve
14 and communicate with their customers. The Commission should modify the CPNI Rules
15 to comply with these constitutional requirements and to either simplify or eliminate the
16 other overly burdensome and complex requirements in the CPNI Rules.

17 RESPECTFULLY SUBMITTED this 5th day of December, 2005.

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